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AMENDED SETTLEMENT AGREEMENT

**Author:** Woolner, Rhodora

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**LSA(s):**

**Co-Counsel:**

**Counsel LSA(s):**

**Distribution List:** Woolner, Rhodora (ENRD);Lattin, Sue (ENRD);Rose, Robert (ENRD);Hebb, Kevin M. (ENRD);True, Michael (ENRD);Gregg, Ragu-Jara "Juge" (ENRD);Day, Regina (ENRD)

**Fileroom:** LPS - Main Justice

**DJ#:** 90-1-24-03945

**Case Name:** SAN FRANCISCO BAYKEEPER V. COLE BROTHERS AUTO WRECKING

**Court:** CA N.D. Cal.; 9th Cir.

**Notes:** SCANNED/UNASSIGNED

**Double-Sided:** Y

**Received Date:** 1/4/2016

**Urgent:**

**Oversize:**

**Bound Document:**

Gregg, Ragu-Jara



SAN FRANCISCO  
**BAYKEEPER.**

December 30, 2015

Citizen Suit Coordinator  
Department of Justice, ENRD  
Law and Policy Section  
P.O. Box 7415  
Ben Franklin Station  
Washington, DC 20044-7415  
Email: [ragu-jara.gregg@usdoj.gov](mailto:ragu-jara.gregg@usdoj.gov)

DEPT. OF JUSTICE - ENRD  
ENVIRONMENT DIVISION  
16 JAN -4 P4:55

Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator, Mail Code 1101A  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

*Sent via Certified Mail and Electronic Mail*

**Re: Settlement Agreement –San Francisco Baykeeper v. Cole Brothers Auto Wrecking**

Dear Citizen Suit Coordinator and Administrator McCarthy:

Attached as Exhibit A, please find a copy of an Amended Settlement Agreement between San Francisco Baykeeper ("Baykeeper") and Floyd Cole, the owner and operator of Cole Brothers Auto Wrecking ("Cole Brothers"), amending the March 25, 2015 Settlement Agreement, resolving Baykeeper's claims against Cole Brothers for Clean Water Act violations alleged in Baykeeper's Notice of Intent to Sue, which Baykeeper sent to Cole Brothers on October 29, 2014. During the course of the Settlement Agreement, Mr. Cole experienced several personal hurdles, which resulted in a failure to comply with the original deadlines in the Settlement Agreement. The parties have agreed to amend the Settlement Agreement to revise the deadlines for (1) clearing the Facility of scrap metal and non-salvageable cars, and (2) making attorney fees payments to Baykeeper.

If you have any questions or comments concerning the terms of Amended Settlement Agreement, please contact me at (510) 735-9700 x110 or [nicole@baykeeper.org](mailto:nicole@baykeeper.org).

Sincerely,

Nicole C. Sasaki  
Associate Attorney  
San Francisco Baykeeper

Filing  
90-1-24-03945



Pollution hotline: 1 800 KEEP BAY  
[www.baykeeper.org](http://www.baykeeper.org)

1736 Franklin Street, Suite 800  
Oakland, CA 94612  
(510) 735-9700

Baykeeper v. Cole Brothers – Notice to DOJ  
December 30, 2015  
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Cc:

Jared Blumenfeld, Regional Administrator  
EPA Region 9  
75 Hawthorne Street  
San Francisco, California 94105

Cc via Electronic Mail:

Shona Armstrong, Counsel for Cole Brothers  
Email: [shona.armstrong@gmail.com](mailto:shona.armstrong@gmail.com)

## **EXHIBIT A**

## AMENDED SETTLEMENT AGREEMENT

WHEREAS, Baykeeper is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other area waters;

WHEREAS, Cole Brothers Auto Wrecking ("Cole Brothers"), which is owned by Floyd Cole, operated an auto wrecking facility located at 1797 12th Street, Oakland, California, 94607 (the "Facility");

WHEREAS, Baykeeper and Cole Brothers are collectively referred to herein as the "Parties";

WHEREAS, stormwater discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board ("State Board")], Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order No. 97-03-DWQ), issued pursuant to Section 402 of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1342 (hereinafter, the "Industrial Stormwater Permit"). These industrial activities include, inter alia, the dismantling and wrecking of used motor vehicles to recycle and resell parts;

WHEREAS, effective July 1, 2015, stormwater discharges associated with industrial activity will be regulated pursuant to the NPDES, General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-0057-DWQ, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter "New General Permit");

WHEREAS, the Industrial Stormwater Permit includes certain requirements for all permittees, including Cole Brothers, with regard to: (1) development and implementation of a storm water pollution prevention plan ("SWPPP"); (2) control of pollutant discharges; and (3) implementation of Best Management Practices ("BMPs"), including those as necessary to prevent or reduce any pollutants that are causing or contributing to any exceedance of water quality standards;

WHEREAS, on October 29, 2014, Baykeeper served Cole Brothers, the Administrator of the U.S. Environmental Protection Agency ("EPA"), the Administrator of EPA Region IX, the Executive Director of the State Board, the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board"), and the U.S. Attorney General with a notice of intent to file suit ("60-Day Notice") under Section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the Industrial Stormwater Permit at the Facility;

WHEREAS, Baykeeper and Cole Brothers entered into a Settlement Agreement to resolve Baykeeper's allegations in the 60 Day Notice by fully executing a Settlement Agreement effective on March 25, 2015;

WHEREAS, Cole Brothers has stopped operating as an active auto wrecking yard;

WHEREAS, Cole Brothers has since made substantial progress in cleaning and clearing the Facility and has initiated termination of its coverage under the Industrial Stormwater Permit;

NOW THEREFORE THE MARCH 25, 2015, SETTLEMENT AGREEMENT IS AMENDED AS FOLLOWS:

#### **COMMITMENTS OF COLE BROTHERS**

1. Cole Brothers shall undertake clean-up and conversion of the Facility as follows:



- A. Cole Brothers will not accept any new vehicles for wrecking as of January 31, 2015.
- B. From February 20, 2015, onward, Cole Brothers will engage in no further motor vehicle dismantling or wrecking activities.
- C. Cole Brothers will improve treatment barricades protecting the stormwater discharge point at the north gate of the Facility by doing the following by January 31, 2015:
- i. Replace and improve the absorbent socks at the north gate stormwater discharge point, so that there will be three new ten foot socks spanning the entire length of the gate (placing two end-to-end and a third across the space where the two socks meet in order to reinforce the barricade and prevent any gaps).
  - ii. Place three new absorbent socks spanning the area from the corner of the trailer in center of Facility (northeast corner of current dismantling area) to a point 20 feet west.
  - iii. Place sandbags on absorbent socks at 5 foot intervals to ensure consistent contact between the barricades and the ground.
- D. From February 1, 2015 to March 31, 2016, Cole Brothers will work steadily to sell and/or remove all scrap, auto parts, and non-salvageable cars from the Facility.
- E. Upon the Effective Date, Cole Brothers shall implement BMPs to reduce or minimize pollutant release from equipment such as dismantled and non-dismantled vehicles, forklifts, trucks, and other equipment that are parked or stored at the Facility from which stormwater discharges. Such BMPs shall include placing drip pans under equipment stored or parked for a week or longer; weekly inspections for evidence of leaks from such equipment; and prompt clean-up of spills, drips, or leaks from such equipment. Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

F. Upon the Effective Date, Cole Brothers shall not conduct routine (*i.e.*, non-emergency) vehicle or movable equipment maintenance or repair at the Facility in outdoor, uncovered areas from which stormwater discharges during rainfall events, except that Cole Brothers may maintain cars personally owned by Floyd Cole and/or his family members in compliance with all the BMPs described in paragraph 1 and paragraph 2(C).

G. By July 1, 2015, Cole Brothers will have removed from the current dismantling area of the cement pad in the center of the Facility all uncovered scrap, auto parts, and salvaged vehicles.

H. By March 31, 2016, Cole Brothers will have completely ceased all dismantling activities, and will have completed proper removal, containment, or cleanup and disposal of potential sources of water pollution at the Facility, including all auto parts, salvaged vehicles, uncovered scrap, and miscellaneous debris and waste. Cole Brothers will retain at the Facility approximately 15 family-owned cars and may, by October 15, 2015, have begun storage of non-family owned cars in pursuit of their new proposed business use of the Facility.

I. By March 31, 2016, Cole Brothers will have swept all impervious surfaces of the Facility.

J. If Cole Brothers misses or anticipates missing any of the deadlines stated in Paragraph 1, Cole Brothers shall promptly notify Baykeeper. The Parties agree to meet and confer in good faith, pursuant to Paragraph 17, concerning the non-performance. If the Parties agree that the non-performance was or is impossible or unreasonable, despite the timely good faith efforts of Cole Brothers, the Parties shall establish new deadlines. In the event that the Parties cannot timely agree upon the terms of such a stipulation, either Party shall have the right to seek enforcement of this Amended Settlement Agreement, as provided in Paragraph 17.



2. If all actions described in Paragraph 1 have been fully and timely completed, Cole Brothers shall operate the Facility after October 1, 2015, as follows:

**A. Sock Filters:** During the Wet Season (October 1 through May 31), Cole Brothers shall place and maintain three ten foot socks spanning the entire length of the north gate of the Facility (placing two end-to-end and a third across the space where the two socks meet in order to reinforce the barricade and prevent any gaps). During the term of this Amended Settlement Agreement, Cole Brothers shall maintain the sock filters at the Facility in good operating condition and shall promptly repair any damaged or degraded sock filters. At a minimum, Cole Brothers shall replace sock filters in accordance with the manufacturer's instructions.

**B. Site Sweeping:** Cole Brothers shall sweep the accessible paved areas of the Facility once per week during the Wet Season and in advance of each forecasted rain event. Cole Brothers shall keep a log or checklist, as appropriate, of the on-site sweeping activity performed ("Sweeping Log"), and shall direct employees and/or contractors to accurately complete the Sweeping Log. The Sweeping Log shall indicate the employee or contractor who conducted the sweeping, the location of the sweeping, and the dates the sweeping activities occurred. The Sweeping Log shall be made available for inspection by Baykeeper at any site inspection or within three (3) business days of a request by Baykeeper.

**C. Vehicle and Equipment Management:** Cole Brothers shall continue the BMPs stated in Paragraph 1.E to reduce or minimize pollutant release from equipment such as dismantled and non-dismantled vehicles, forklifts, trucks, and other equipment that are parked or stored at the Facility from which stormwater discharges. Such BMPs shall include placing drip pans under equipment stored or parked for a week or longer; weekly inspections for evidence of leaks from such equipment; and prompt clean-up of spills, drips, or leaks from such equipment.

Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

**D. Abandoned or Inutile Equipment Storage and Removal:** Cole Brothers shall either store under cover or, as soon as feasible, remove from the Facility all abandoned or broken equipment or materials no longer considered for future use that have the potential to serve as the source for pollutant loading.

**E. Vehicle and Equipment Maintenance:** Cole Brothers shall not conduct routine (*i.e.*, non-emergency) vehicle or movable equipment maintenance or repair at the Facility in outdoor, uncovered areas from which stormwater discharges during rainfall events.

**F. Amendment of SWPPP:** No later than March 31, 2016, Cole Brothers shall terminate the Facility's coverage under the General Industrial Stormwater Permit. Until the Regional Board approves the Notice of Termination, compliance with the SWPPP and the BMPs described in the Settlement Agreement, as amended in accordance with this Paragraph provision, shall at all times be a requirement of the Amended Settlement Agreement.

**G. Training:** By October 1, 2015, and annually thereafter, and within thirty (30) days of new employees or representatives (collectively, "employee" or "employees") beginning duties at the Facility, Cole Brothers shall conduct training for each employee to explain the requirements of the Facility's SWPPP and this Amended Settlement Agreement to the extent applicable to each person. Training shall focus on the employee's role in implementing various stormwater control measures including, for example, implementation of BMPs, sweeping, vehicle maintenance, or facility inspections. Training shall be conducted in the relevant language to the extent that such employee is not reasonably able to comprehend training in English. If and when

appropriate, Cole Brothers shall integrate any new training requirements resulting from this Agreement into the Facility SWPPP.

### **SAMPLING, MONITORING, INSPECTION & REPORTING**

3. **Stormwater Sampling Program:** Beginning with the 2015-2016 Wet Season, Cole Brothers shall collect and analyze stormwater samples from all of the discharge points at the Facility ("Designated Sampling Point(s)") at the Facility according to the following schedule:

A. During the 2015-2016 Wet Season, and 2016-2017 Wet Season if required by Paragraph 23, Cole Brothers shall collect and analyze samples from all Designated Sampling Points during the first three (3) storm events of the Wet Season that meet the conditions of Section B.5.b under the Industrial Stormwater Permit or, after the 2014-15 Wet Season, that meet the requirements for a "Qualifying Storm Event" as defined in Section XI.B.1 of the New General Permit, except that Cole Brothers can collect and analyze stormwater discharges after the first hour of discharge during scheduled operating hours and samples can be collected during any storm event that is preceded by a 24-hour dry period. Each stormwater sample must be analyzed for the presence of each of the parameters listed in Exhibit 1. In the event Cole Brothers is unable to collect three samples from each Designated Sampling Point in a Wet Season, Cole Brothers shall explain in writing why it was unable to collect the required sample(s).

B. Should industrial processes materially change at the Facility, Cole Brothers shall conduct sampling for any additional toxic priority pollutants listed in 40 C.F.R. § 131.38 likely to be present in Cole Brothers' stormwater discharges in quantities that will cause or contribute to the exceedance of the applicable Target Levels in Exhibit 1 as a result of the changed industrial processes.

4. **Certified Lab:** Cole Brothers shall have all stormwater samples collected pursuant to this Amended Settlement Agreement delivered to a California state certified environmental laboratory for analysis within the time needed for analysis within laboratory method allowable hold times and hold procedures. The laboratory shall thereafter conduct analysis sufficient to detect individual constituents at or below the levels set forth in the attached Exhibit 1.

5. **Sample Result Reporting:** During the terms of this Amended Settlement Agreement, Cole Brothers shall provide complete results from its sampling and analysis to Baykeeper within ten (10) business days of receipt of the laboratory report from each sampling event.

6. **End of Season Summary:** By July 15 following each Wet Season that occurs during the Amended Settlement Agreement, Cole Brothers shall prepare and send to Baykeeper an End of Season Summary that includes: (1) a summary chart with all of the sample results from the previous Wet Season, including the constituent concentration(s) from Designated Sampling Point(s) sample(s) collected at the Facility exceeding the Target Levels in Exhibit 1 ("Exceedance"); and (2) identification of any new BMPs that Cole Brothers has implemented or will implement not already discussed in a prior End of Season Summary or Action Plan for the immediately prior Wet Season.

7. **Action Plan:** If any stormwater sample result during a Wet Season exceeds any Target Level set forth in Exhibit 1, Cole Brothers shall submit an Action Plan in addition to an End of Season Summary by July 15 following that Wet Season.

8. **Contents of Action Plan:** If an Action Plan is required, it shall set forth: (1) the possible sources of Cole Brothers' Exceedance(s) during the applicable Wet Season; (2) revised and/or additional BMPs, if any, that are designed to reduce the level of constituent concentrations associated with the future stormwater discharges to the Target Levels in Exhibit 1; and (3) a

schedule to implement any such revised and/or additional BMPs by the earliest practicable time, and by no later than October 1 of the next Wet Season.

**9. Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt of the Action Plan to propose revisions to the Action Plan. Within thirty (30) days of receiving Baykeeper's proposed revisions, Cole Brothers shall consider each of Baykeeper's recommended revisions to the Action Plan and accept them or timely request, in accordance with Paragraph 17, a meet and confer to discuss.

**10. Implementation of Action Plan:** Cole Brothers shall implement the Action Plan adopted pursuant to this Amended Settlement Agreement as an obligation of this Amended Settlement Agreement. Within thirty (30) days after BMPs, if any, set forth in an Action Plan pursuant to this Amended Settlement Agreement are implemented, Cole Brothers shall amend its SWPPP to include all BMP revisions or additions not otherwise already implemented and included in the SWPPP. Within thirty (30) days thereafter pursuant to this paragraph, Cole Brothers shall provide Baykeeper with a copy of such revised SWPPP.

**11.** During each Wet Season, Cole Brothers is under an ongoing obligation to evaluate the BMPs implemented at the Facility and discussed in current or previous Action Plans and, if Target Levels have been exceeded, continue to seek reductions, to the extent reasonably practicable, in the concentrations to Target Levels for the remainder of the Wet Season. Cole Brothers shall use the results from subsequent stormwater samples as they become available to assist with its ongoing evaluation of the effectiveness of BMPs.

**12. Stipulated Payments:** Cole Brothers shall pay the following stipulated payments during the Term of this Amended Settlement Agreement.



A. One hundred dollars (\$100) for each failure to collect a sample required under this Amended Settlement Agreement during the Wet Season beginning with the 2015-2016 Wet Season;

B. \$50 per business day (Monday through Friday, excluding state and federal holidays) after the report due date for each failure to timely submit any document, report or other communication required under this Agreement.

C. \$50 per business day (Monday through Friday, excluding state and federal holidays) after the due date for each failure to timely comply with the requirements in Paragraph 1.

D. Stipulated payments shall be paid to Baykeeper within thirty (30) days of notification of the failure to comply, or, if Cole Brothers, has involved dispute resolution under Paragraph 17, within thirty (30) days of the dispute resolution process terminating.

E. Stipulated payments calculated on a daily basis shall not accrue during the pendency of a dispute resolution process under Paragraph 17.

**13. Site Access:** During the Term of this Amended Settlement Agreement, Cole Brothers shall permit representatives of Baykeeper to conduct a physical inspection of the Facility ("Site Inspection") as follows:

A. Baykeeper may conduct Site Inspections on or about the Effective Date; July 2, 2015; and October 2, 2015 and March 31, 2016, in order to ensure that Cole Brothers is making steady progress and complying with its obligations under Paragraph 1.

B. After March 31, 2016, if Cole Brothers has not adequately cleared the Site, Baykeeper may perform one (1) Site Inspection per year of the Facility during operating hours.

C. For any Site Inspection, Baykeeper shall provide Cole Brothers notice at least seventy-two hours (72) hours in advance of such Site Inspection. During the Site Inspection,



Baykeeper shall be allowed to take photographs and inspect and sample any stormwater discharges.

**14. Reports:** During the Term of this Amended Settlement Agreement, Cole Brothers shall provide Baykeeper with a copy of all documents submitted to the Regional Board or the State Board concerning the Facility's compliance with the Industrial Stormwater Permit or New General Permit. Such documents and reports shall be transmitted to Baykeeper via electronic mail, if feasible, or by U.S. Mail when electronic transmission is not feasible, at the time the documents are due to be submitted to the Regional Board or State Board.

#### **FEES, COSTS, AND DISPUTE RESOLUTION**

**15. Reimbursement of Fees and Costs:** Cole Brothers shall reimburse Baykeeper in the amount of eight thousand dollars (\$ 8,000) to help defray Baykeeper's reasonable investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the Facility related to this Amended Settlement Agreement, bringing these matters to Cole Brothers' attention, and negotiating a resolution of this action in the public interest. Cole Brothers shall tender payment of \$4,000, payable to Baykeeper, within thirty (30) days of the Effective Date. Cole Brothers shall tender payment of \$2,000, payable to Baykeeper, by December 31, 2015. Cole Brothers shall tender payment of the final \$2,000, payable to Baykeeper, by March 31, 2016.

**16. Compliance Monitoring Funds:** Cole Brothers shall provide to Baykeeper one thousand dollars (\$ 1,000) per year for each year of the Term of this Amended Settlement Agreement, commencing in 2016, for costs and fees associated with monitoring Cole Brothers' compliance with this Amended Settlement Agreement. Monitoring activities include site inspections, review of water quality sampling reports, review of annual summary reports, review

of Action Plans and other documents submitted pursuant to this Amended Settlement Agreement, discussion with representatives of Cole Brothers concerning potential changes to compliance requirements, water quality sampling, informal dispute resolution, and other actions necessary to monitor and ensure Cole Brothers' compliance with this Amended Settlement Agreement. The compliance monitoring fund payment shall be made payable to Baykeeper on July 15th of each year that this Amended Settlement Agreement is in effect, beginning in 2016.

**17. Dispute Resolution:** If a dispute under this Amended Settlement Agreement arises, or either Party believes that a breach of this Amended Settlement Agreement has occurred, the Parties shall schedule a meet and confer within ten (10) business days of receiving written notification from the other Party of a request for a meeting to determine whether a violation of this Amended Settlement Agreement has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet and confer or the meet and confer does not resolve the issue, after at least seven (7) business days have passed after the meet and confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under the law before the United States District Court for the Northern District of California. The prevailing party shall be entitled to seek fees and costs incurred in any such action.

### **JURISDICTION**

**18. Jurisdiction:** For the purposes of this Amended Settlement Agreement, the Parties stipulate that the United States District Court of California, Northern District of California, has jurisdiction over the Parties and subject matter of this Amended Settlement Agreement. The Parties stipulate that venue is appropriate in the Northern District of California and that Cole Brothers will not raise in the future as part of enforcement of this Amended Settlement

Agreement whether Baykeeper has standing to bring the Complaint or any subsequent action or motion pursuant to the Dispute Resolution procedures herein.

**19. Submission of Settlement Agreement to DOJ:** Within three (3) business days of receiving all of the Parties' signatures to this Settlement Agreement, Baykeeper shall submit this Settlement Agreement to the U.S. Department of Justice ("DOJ") and EPA for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the DOJ, evidenced by correspondence from DOJ establishing the review period. In the event DOJ comments negatively on the provisions of this Settlement Agreement, the Parties agree to meet and confer to attempt to resolve the issues raised by DOJ.

#### **WAIVER, RELEASES AND COVENANTS NOT TO SUE**

**20. Baykeeper Waiver and Release of Noticed Parties and Covenant Not to Sue:** Upon the Effective Date, Baykeeper, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors or assigns, covenants not to sue Cole Brothers or its owners, officers, employees, affiliates, or their successors or assigns, or its agents, attorneys, or other representatives with respect to any stormwater discharges from the Facility that arose before or may arise during the Term of this Amended Settlement Agreement. Baykeeper, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors and assigns releases Cole Brothers or its owners, officers, employees, affiliates, or their successors or assigns, or its agents, attorneys, or other representatives from and waives all claims raised in the 60-Day Notice, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice.

**21. Cole Brothers' Waiver and Release of Baykeeper:** Cole Brothers, on its own behalf and on behalf of its or its owners, officers, employees, affiliates, or their successors or assigns, releases Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns from, and waives all claims which arise from or pertain to, the 60-Day Notice, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice.

#### **TERMS OF THE AMENDED SETTLEMENT AGREEMENT**

**22. Effective Date:** This Amended Settlement Agreement shall be effective upon mutual execution by all Parties ("Effective Date").

**23. Term of Amended Settlement Agreement:** If Cole Brothers meets all of its obligations under Paragraph 1 and meets all Target Levels for the 2015-2016 Wet Season for two consecutive sampling events, or if the Parties otherwise agree in accordance with the terms herein that further or revised BMPs are not reasonably practicable in the event one or more parameters are not reduced below Target Levels, the Amended Settlement Agreement, and all obligations under it, shall automatically terminate on April 1, 2016. If Cole Brothers either does not meet its obligations under Paragraph 1 or does not meet all Target Levels for the 2015-2016 Wet Season for two consecutive sampling events, then this Amended Settlement Agreement shall continue in effect until September 30, 2017, at which time the Amended Settlement Agreement, and all obligations under it, shall automatically terminate. The waivers, releases, and covenants contained in Paragraphs 20-21, inclusive, of this Amended Settlement Agreement shall survive the termination of this Amended Settlement Agreement.

**24. Early Termination:** If Cole Brothers should cease industrial operations at the Facility and file a Notice of Termination ("NOT") under the Industrial Stormwater Permit or the New General Permit prior to the termination date of this Amended Settlement Agreement, the following provisions apply:

A. Cole Brothers shall send Baykeeper a copy of the proposed NOT concurrent with its submission to the Regional Board.

B. Within ten (10) days of the Regional Board's approval of the NOT, Cole Brothers shall notify Baykeeper in writing of the approval and continue to remit all outstanding payments, including stipulated payments and remaining attorneys' fees and costs, to Baykeeper pursuant to the schedule established herein.

C. If the Regional Board approves the NOT before the last payment of attorneys' fees and costs is due pursuant to Paragraph 15 (December 31, 2015) but Cole Brothers does not remit payment of the remaining attorneys' fees and costs in accordance with Paragraph 24.B, the schedule for payment stated in Paragraph 15 remains, and the Amended Settlement Agreement is not completely terminated until all payments due pursuant to Paragraph 15 are received by Baykeeper. Upon Baykeeper's receipt of the notice of approval of the NOT, however, no other terms of the Agreement, other than the obligations stated in Paragraph 15, are enforceable, unless otherwise stated in this Amended Settlement Agreement.

D. Upon Baykeeper's receipt of the notice of approval of the NOT and of all payments due pursuant to Paragraph 15 and/or outstanding payments otherwise due under the terms of this Amended Settlement Agreement and upon Baykeeper's successful reinspection of the Site on March 31, 2015, this Amended Settlement Agreement shall be terminated.

E. Notwithstanding Paragraph 24.D, if Cole Brothers continues different industrial operations at the site that are regulated by the Industrial Stormwater Permit or the New General Permit, the Amended Settlement Agreement shall remain in effect. If a successor or assign continues industrial operations at the site and assumes responsibility for implementation of this Settlement Agreement pursuant to Paragraph 35, Cole Brothers shall notify Baykeeper within ten (10) days of this transition.

#### **MISCELLANEOUS PROVISIONS**

**25. Execution in Counterparts:** The Amended Settlement Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

**26. Signatures:** The Parties' signatures to this Amended Settlement Agreement transmitted by facsimile or electronic mail transmission shall be deemed binding.

**27. Construction:** The language in all parts of this Amended Settlement Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning. The captions and paragraph headings used in this Amended Settlement Agreement are for reference only and shall not affect the construction of this Amended Settlement Agreement.

**28. Authority to Sign:** The undersigned are authorized to execute this Amended Settlement Agreement on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Amended Settlement Agreement.

**29. Integrated Amended Settlement Agreement:** All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Amended Settlement Agreement are contained herein.



**30. Severability:** In the event that any of the provisions of this Amended Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected, so long as the deletion of provisions deemed unenforceable does not materially affect, or otherwise result in the effect of the Amended Settlement Agreement being contrary to, the intent of the Parties in entering into this Agreement.

**31. Choice of Law:** This Amended Settlement Agreement shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

**32. Full Settlement:** This Amended Settlement Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Amended Settlement Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.

**33. Negotiated Agreement:** The Parties have negotiated this Amended Settlement Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Amended Settlement Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.

**34. Modification of the Agreement:** This Amended Settlement Agreement, and any provisions herein, may not be changed, waived, or discharged unless by a written instrument signed by the Parties.

**35. Assignment:** Subject only to the express restrictions contained in this Amended Settlement Agreement, all of the rights, duties and obligations contained in this Amended Settlement Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

**36. Mailing of Documents/Notices/Correspondence:** Any notices or documents required or provided for by this Amended Settlement Agreement or related thereto that are to be provided to Baykeeper pursuant to this Amended Settlement Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic mail transmission is not feasible, via certified U.S. Mail with return receipt, or by hand delivery to the following address:

San Francisco Baykeeper  
Attn: Nicole Sasaki  
1736 Franklin St., Suite 800  
Oakland, CA 94612  
E-mail: nicole@baykeeper.org

Unless requested otherwise by Cole Brothers any notices or documents required or provided for by this Amended Settlement Agreement or related thereto that are to be provided to Cole Brothers pursuant to this Amended Settlement Agreement shall, to the extent feasible, be provided by electronic mail transmission to the e-mail addresses listed below, or, if electronic mail transmission is not feasible, by certified U.S. Mail with return receipt, or by hand delivery to the addresses below:

Floyd Cole, c/o Shona Armstrong  
1634 Telegraph Avenue, #3  
Oakland, CA, 94612  
E-mail: shona.armstrong@gmail.com  
(510) 420-8455

Notifications of communications shall be deemed submitted on the date that they are emailed, or postmarked and sent by first-class mail or deposited with an overnight mail/delivery

service. Any changes of address or addressees shall be communicated in the manner described above for giving notices.

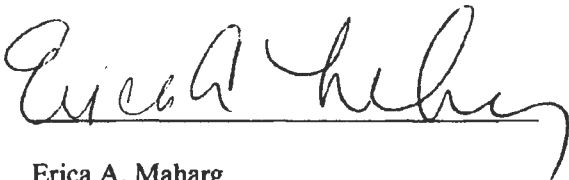
**37. Impossibility of Performance:** No Party shall be considered to be in default in the performance of any of its obligations under this Amended Settlement Agreement when performance becomes impossible, despite the timely good faith efforts of the Party, due to circumstances beyond the Party's control, including without limitation any act of God, act of war or terrorism, fire, earthquake, flood, and restraint by court order or public authority.

"Circumstances beyond the Party's control" shall not include normal inclement weather, economic hardship or inability to pay. Any Party seeking to rely upon this paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the impossibility of performance.

38. If for any reason the U.S. Department of Justice should decline to approve this Amended Settlement Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Amended Settlement Agreement within thirty (30) days so that it is acceptable to the U.S. Department of Justice.

SAN FRANCISCO BAYKEEPER

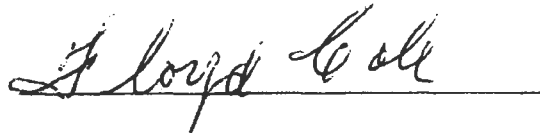
Date: 12/24, 2015



Erica A. Maharg  
Staff Attorney

COLE BROTHERS AUTO WRECKING

Date: Dec 22, 2015



Floyd Cole  
Owner



## EXHIBIT 1

### Target Levels for Stormwater Sampling

Constituent	Target Levels	Source
pH	6.5– 8.5 SU	<i>San Francisco Bay Basin Water Quality Control Plan, Water Quality Objective</i>
Total Suspended Solids	100 mg/L	<i>Multi-Sector General Permit 2008 Sector-Specific Benchmark</i>
Oil and Grease	15 mg/L	<i>Multi-Sector General Permit 2000 Benchmark</i>
Chemical Oxygen Demand	120 mg/L	<i>Multi-Sector General Permit 2008 Sector-Specific Benchmark</i>
Total Aluminum	0.75 mg/L	<i>Multi-Sector General Permit 2008 Sector-Specific Benchmark</i>
Total Copper	0.0048 mg/L	<i>Multi-Sector General Permit 2013 Sector-Specific Benchmark</i>
Total Iron	1.0 mg/L	<i>Multi-Sector General Permit 2008 Sector-Specific Benchmark</i>
Total Zinc	0.09 mg/L	<i>Multi-Sector General Permit 2013 Sector-Specific Benchmark</i>
Total Lead	0.21 mg/L	<i>Multi-Sector General Permit 2013 Sector-Specific Benchmark</i>
Total Mercury	.0024 mg/L	<i>San Francisco Bay Basin Water Quality Control Plan, Water Quality Objective</i>

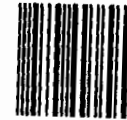
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